



Article

# The Crimes of the Powerful: Between Force and Consensus

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**Abstract:** Power entails the ability to act and overcome the obstacles erected by those who are subject to it. It also entails the capacity to make one's crimes acceptable, while formulating criminal imputations against others. The crimes of the powerful, in this contribution, are examined through the lenses of a number of intertwined variables: coercion, legitimacy, violence, secrecy, consensus, and hegemony. Ostentation, imitation, and admiration are also considered as components of these types of crimes and the feelings they elicit. While the controversies surrounding legal responses to the crimes of the powerful are discussed, the efficacy of concerted action against them is optimistically invoked.

**Keywords:** coercion; legitimacy; secrecy; consensus

## 1. Introduction

In the formulation of [Russell \(1975\)](#), power is the production of intended effects. The element of intention or “will” is also stressed by [Weber \(1978, p. 943\)](#), who defines power as “the probability that an actor in a social relationship will be in a position to carry out his own will despite resistance”. We have here two key components of power: the capacity to perform purposive action, on the one hand, and the ability to overcome obstacles, on the other. In social theory, we find numerous descriptions of the functioning and the process of actualization of these two components. This contribution intends to provide an outline of this process.

The capacity to produce intended effects is what distinguishes powerful from powerless individuals and groups, with the former being granted a wide range of choices and potential actions to be carried out ([Bauman 1990](#)). Power, in this sense, derives from the number and diversity of choices available and the ability to predict their outcomes. In making choices and acting, however, the powerful may turn the actions performed by others into means for their own goals, and this can be realized through coercion or legitimacy. The crimes of the powerful, in the analysis proposed below, are enacted through varied combinations of coercion, legitimacy, violence, secrecy, consensus, and hegemony. After an attempt to examine some such combinations, this contribution discusses the viability of social and institutional responses to the crimes of the powerful.

## 2. Coercion

Classical sociology distinguishes between military societies and industrial societies, respectively characterized by the spirit of conquest and the spirit of cooperation. In the evolutionary perspective of [Spencer \(1885\)](#) and [Comte \(1953\)](#), the predominance of the latter type of societies will determine the decline of warfare. Cooperation, therefore, seems to exclude coercion. Even in a Marxist vision, the main sources of social control can be attributed to the “free” exchange between labor and industrial capital, while violence, structurally implicit in that exchange, may also characterize collective class struggle, ultimately culminating in revolutionary force.

The pioneering contribution of [Pearce \(1976\)](#) can be located in this tradition of thought. Pearce explains why there is a discrepancy between “official portrayals of reality and



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what is actually taking place" (ibid., p. 80), and in discussing the international activities for corporations makes a radical break from traditional criminology. Following in the footsteps of [Sutherland \(1940\)](#), he describes the hidden processes that preside over the "distribution of criminal activity and the nature of the social response to this", contrasting the "imaginary social order" associated with presumably pluralist and democratic societies with the description of their real nature. His is an effort to unveil how coercive social relationships are embedded in a specific power rationality. Of course, a vast amount of literature has been produced since the publication of Pearce's work, covering myriad specific case studies as well as theoretical issues and controversies ([Barak 2012, 2015](#); [Friedrichs 2007](#); [Geis 2016](#); [Rothe and Kauzlarich 2016](#); [Ruggiero 2013, 2015, 2017, 2020](#); [Tombs and Whyte 2003](#); [Whyte 2009](#)). Some, including this author, have gone to great length in reviewing such literature, while the present paper intends to draw attention to a number of categories that may add to extant analyses.

Coercion as a category is central in right-wing thinking around power. Inspired by Manichean juxtapositions, the analysis distinguishes between good and evil in the moral realm, beautiful and ugly in aesthetics, profitable and unprofitable in economics, and friend and enemy in politics ([Schmitt 1976, 1985](#)). This categorical distinction separates the political from the ethical, isolating power as a distinct entity to be studied in its own terms. Power presupposes the existence and creation of strangers, others, enemies and is necessarily exercised through conflict. A form of warfare, it generates violations, excesses, and crimes, in routine acts aimed at keeping the evil, the ugly, and the other at a distance ([Hausgaard 2009](#)).

Although this polarization may describe the antagonistic relationships within party politics in democracy, the violence on which such polarization is based is the legacy of the birth and expansion of state power. Large-scale violence proved to be the most efficient tool for the extraction of resources, the accumulation of capital, the drawing of national borders, and the forging of identities ([Tilly 1985](#)). Notions such as humanity, justice, progress, and civilization provided powerful ideological devices in this process, legitimizing invasion and conquest and allowing the subjugation of reluctant aliens and their coercive assimilation into "humanity": "when you have to deal with beasts you have to treat them as beasts" ([Hausgaard 2009](#), p. 286).

There was no end to war and conquest, as external violence turned into disciplinary devices addressed at internal others, so that their effects were inscribed in institutions, in social inequality, and in the bodies themselves of each and every one of us ([Foucault 1980](#)). In brief, the control of the means of production proceeded simultaneously with the control of the means of destruction. However, while naked power exemplified by a military apparatus deters and terrorizes, forcing individuals to do things that they would not otherwise do, it also aspires to designate a supreme moral authority. Violence, in other words, is an expression of, and simultaneously aims to generate, hegemony. Violent crimes committed by powerful individuals and groups are inspired by a similar aim.

That the two components of power, coercion, and hegemony are intimately connected is clear in [Weber's \(1978\)](#) argument that domination may be established by virtue of "a constellation of interests" and by virtue of "authority". The former falls in the economic domain and derives from the possession of resources and marketable goods: this type of domination determines the conduct of those devoid of possessions, who nevertheless remain formally free and motivated simply by the pursuit of their reproduction. Monopolies, it is implied, are the extreme forms of this type of domination. The latter type is exemplified by patriarchal, magisterial or princely power; therefore, it "rests upon the alleged absolute duty to obey, regardless of personal merit or interests" ([Lukes 1986](#), p. 30). Domination by virtue of constellation of interests, as Weber postulates, often turns into domination by authority, as material possessions are transformed into duty to obey on the part of the dispossessed.

The crimes of the powerful, within the framework delineated so far, are routine expressions of power itself, chains of events and actions that reinforce authority in social

and institutional spheres. There are, however, other modalities through which power can commit crime, for example by reducing the cognitive area of those subjected to it. Rulers are bound to limit and select social demands, and they do so by choosing the issues and the areas to which their responses are addressed (Luhmann 1975, 1985). For power, decisions are important, but just as important are the decisions that are not made, the proposals that are never considered, the innovative ideas that are somehow always out of the question. "Ruling a country means controlling the political agenda, defining what is thinkable and unthinkable, and this work is always done behind the façade of democratic politics" (Walzer 2004, p. 24). Selective and reductive activities turn into impunity when crimes of the powerful are committed; this is because citizens interact with the sources of power only sporadically and in extremely limited spheres of social life. They, therefore, are the recipients of injunctions, of binding decisions transmitted to them, but the complexity of their condition does not allow them to orient themselves politically and ethically. By providing such orientation to citizens, in brief, power reduces the autonomy of their judgment, thus making its crimes invisible (Ruggiero 2015). Coercion and selection, in this case, also entail a degree of concealment and/or secrecy.

The selective process through which coercion is concealed, therefore, entails the control of agendas, so that the field of the dominated is structured and narrowed by the dominators. While in Marx, this process is accompanied by the development of a "false consciousness" on the part of the dominated, in Weber, it leads to an authoritative power of command that exacts obedience through the acceptance of the norms it imposes.

In brief, it is extremely hard to draw a neat difference between coercive power strategies and consensual exercise of authority, as the analysis of the concept of hegemony may confirm.

### 3. Hegemony and Secrecy

Structures of dominancy are constituted through norms that acquire hegemony thanks to customary social practice. A dynamic of this process is clearly described by Dewey (1997, p. 4) in his analysis of "how we think". Thoughts, he argues, grow unconsciously and "without reference to the attainment or correct belief".

From obscure sources and by unnoticed channels they insinuate themselves into acceptance and become unconsciously a part of our mental furniture. Tradition, instruction, and imitation are responsible for them. (ibid)

But such thoughts, Dewey specifies, are prejudices, that is, prejudgments, not judgments proper that rest upon a survey of evidence. In a Weberian sense, it is not only thoughts, but every sphere of social order which is profoundly influenced by structures of dominancy. These structures are taken for granted, although, at times unobtrusively, they privilege certain specific ideas and interests. We can also term these thoughts and structures as "meaning systems", historical a priori that help people to make sense of their world.

In Gramsci's surprisingly enduring analysis, consensus and hegemony are closely related to the point of almost overlapping. Supremacy of a social group, he argues, manifests in two ways: as domination and as intellectual and moral leadership (Gramsci 1971). Domination aims at subjugating, or even liquidating rival groups. However, it is leadership that allows the exercise of power, as moral and intellectual values are widely spread, shared, and ultimately internalized even before power itself can be exercised. Conflicts between social groups result in the victory of the party which "captures" the mind and the political sensibility of the enemies, thus absorbing them in a hegemonic culture. Some groups, according to Gramsci: "for reasons of submission and intellectual subordination, adopt a conception of the world which is not their own but is borrowed from another group" (ibid., p. 327).

Focusing on current developed democracies, there are two major, intertwined domains in which hegemony needs to be achieved, namely, the domain of economic life and that of international relations. Although not distinctively separable, in the former, at issue is

the dominant philosophy of neoliberalism, whose perpetuation must rely on support or, at least, on silent consensus. In the latter, hegemony has to manifest itself by making violence, particularly in the form of war, an acceptable version of Gramsci's domination. Let us briefly examine the two domains separately.

"Freedom" in labor markets consists of the encounter between those who use others as means to their ends and those who allow themselves to be used in that manner. "The superb meeting point of these two freedoms is called employment" (Lordon 2014, p. ix). This coerced freedom implies a form of capture, which consists of getting individuals to act on behalf of the capturer while closing down other avenues of their reproduction. In a formula indebted to Marxist analysis:

If the primary meaning of domination consists in one agent's having to pass through another to access the object of desire, then evidently the employment relation is a relation of domination. (ibid, p. 12)

Hegemony, in this realm, may be achieved through the dissociation of the figure of the consumer from that of the employee, with the former becoming predominant at the cost of life indebtedness. Domination through employment, moreover, tends to increase with the relocation of business, whereby the employees are forced to compete with colleagues scattered across the world who accept lower salaries and, therefore, a lower level of consumerism. Such competition generates uncertainty and fear, transforming the labor force into a fluid mass to be forged and governed as a component of a portfolio, as a mere asset at the disposal of investors. Consensus and hegemony thrive on threat, which incorporates a degree of violence and, at the same time, on forms of social control that seem to render violence unnecessary.

It could be argued that hegemony, in this case, is achieved thanks to a degree of secrecy, which characterizes many operations in contemporary global markets. Companies are constituted by multiple layers of concealment: they may be based in a tax haven, be controlled by a sister company in a Western European country, possess large interests in another company in Asia, and be managed by one located in the US. Secrecy describes not only the financial aspects of operations, identifiable as the concealment of profits and the evasion of taxes, but also the very productive processes in which companies engage. Resources, practices, peoples, monies, entire productive operations are "moved from one national territory to another, and they are wholly or partly hidden from the view of the public and/or public authorities" (Urry 2014, p. 9).

Considering the domain of international relations, consensus and hegemony may be mobilized through the depiction of invasions as democratic missions. The crimes of the powerful perpetrated at the international level, in this way, become celebrations of democratic values, although wars against undemocratic enemies require that the very democratic principles allegedly inspiring them be jettisoned. The several terrorism legislations drawn up in recent years, for instance, appear to imply that the defense of freedom requests the sacrifice of giving up freedom. Simultaneously, in the name of universalistic values, some humans are placed outside the universe of moral obligation, while it is ultimately the aggressors who draw the line between legitimate and illegitimate coercion.

Concealment and secrecy as components of hegemony are also determined by the considerable distance (geographical, relational, functional or simply cultural) between the parties. The victims of international aggressions and other crimes become invisible, their suffering and even their death failing to produce reactions but spawning insensitivity and resulting "in eyes turned away from a silent ethical gaze" (Bauman and Donskis 2013, p. 9). Our gaze is spared cruel spectacles, and we are reassured that such spectacles will never enter our private domain. As Dal Lago (2012) remarks, since 1991, Western countries led by the US have fought in Iraq, Bosnia, Somalia, Serbia, Afghanistan, Iraq again, Libya, Pakistan, Syria, and so on. Nevertheless, we may feel that we have never been at war, a feeling of indifference unprecedented in history. The word "war" is prohibited; in its place, we have "peacekeeping operations" or "protecting civilian populations". Soldiers are advised to present themselves as social workers.

#### 4. Ostentation

Hegemony and violence, as I have argued above, may be intertwined and at times hidden behind threat and the exercise of fear. Secrecy is a variable in this equation, although the crimes of the powerful are at times characterized by its reverse, ostentation, that strengthens the position of those who commit them. The variable ostentation, however, appears to be applicable to certain types of crimes of the powerful more than to others, as it becomes clear when considering that not all crimes of the powerful are immune to prosecution. It has to be hypothesized, in this respect, that the crimes which are prosecuted and at times punished are deemed dysfunctional even from the perspective of the elite, which fears that egoistical interests on the part of some individual offender may jeopardize the interest of their class as a whole.

On the other hand, the suggestion that these crimes are motivated by the mere pursuit of profit depicts only a partial picture. The crimes of the powerful, in reality, are foundational events, in the sense that they transform rules, experiment with new procedures and, ultimately, act as legislative tools. They establish a new type of morality and legitimacy by creating precedents and decriminalizing conduct. Invasion of “evil” countries, torture, the use of prohibited weapons, extraordinary rendition, and the like are examples of non-monetary crimes that transform international law by violating it. At the domestic level, discriminatory and violent policing may possess the same characteristics, as it does not incorporate a direct monetary element but aims to augment the power of the perpetrators. The crimes of the powerful, in this sense, are signals that indicate the “conatus” of power to grow indefinitely, and unchallenged. As such, they are bound to showcase their exploits and dynamics, and to advertise their pursuit of non-legal mechanisms of cooperation. Secrecy would not allow for the emission of signals.

People engage in signaling games in order to show that they are desirable partners in cooperative endeavors. Such games establish behavioral regularities and guarantee the predictability of the effects of interactions. Good or bad reputations, depending on the signaler, are built as people attempt to publicize their skills and potential to benefit others in joint ventures. When criminals send signals, they find the way of displaying their credentials, identifying each other, advertising the goods they trade and their reputation (Gambetta 2009). Law-abiding people, similarly, identify possible partners by signaling their own reputation as cooperative individuals. Powerful criminals, however, may value the immediate benefit of their behavior more than its reputational consequences, thus discounting the future heavily. Violators, at times, may also be motivated by the fact that others cannot afford to ostracize them, and that even their bad reputation will not reduce the desire of others to interact with them: at times, cutting off relationships with violators can result in loss (for example, cutting links with investment banks). This perception is caused by the idea that those who violate social norms are wealthy and powerful enough to be able to afford violations, and that they deserve cooperation or imitation.

The pursuit of profit is, therefore, accompanied by the desire to be imitated and expand the range of potential or actual accomplices.

A common modern form of hubris is for increasingly successful people to violate norms until they go too far and are finally shunned by anyone whose cooperation they would find desirable. They violate norms as a challenge: it is their way of saying: you need me more than I need you. (Posner 2000, p. 28)

More than secretive or conspiratorial, the crimes of the powerful, in this case, must be visible, they must signal values and goals, solicit imitation or even admiration.

Ostentatious violators of social norms include conventional as well as powerful criminals, both implicitly declaring their loyalty to their own system of values as alternative systems to the dominant ones. What is important to note, therefore, is that such violators may trigger “herd behavior”, namely, imitative conduct based on the observation that the behavior of violators is undeniably successful. In such circumstances, shaming violators by communicating their undesirable character proves ineffective, as it is unlikely to provoke genuine ostracism. Even the peers of violators will hesitate to act as whistleblowers, fearing

the loss of future opportunities that interactions with them will certainly bring. In brief, the act of shaming is often too costly. In extreme cases, even formal punishment may fail to build a bad reputation for those punished, who can instead use it as a “badge of status”, a sign of distinction which augments rather than dents their popularity.

Under the circumstances just alluded to, discarding the future is indeed justified, as popularity and admiration augur well for further crimes to follow. In other cases, however, the future is a key concern of powerful criminals, who may identify “uncertainty” as a crucial aspect of their life. They may be led to crime by their occupational culture, but also by what they perceive as their contingent condition, by the assessment of their uncertain status, and the forecast of future developments. The crimes of the powerful, therefore, could be partly deemed the outcome of fear for the future. Fear, however, is also an element of power itself. As [Poggi \(2001, p. 11\)](#) has perceptively argued:

Power has to do with the future, with expectations, with hopes and fears. In this sense, it has anthropological significance . . . Hobbes was right in saying that humans alone, among animals, can feel tomorrow’s hunger today. We can think of power as a way of confronting and controlling the inexorable sense of contingency and insecurity generated by our awareness of the future.

The crimes of the powerful, then, are the result of an obsessive relationship of powerful individuals and groups with their future, they are forms of accumulation and accretion of the power they already possess inspired by fear that in the future, events may lead to them losing it. This fear makes the distinction between immediate easy profit and long-term interest extremely difficult to draw, at least from the point of view of the perpetrators.

## 5. Homo Juridicus

Responses to the crimes of the powerful may combine legal and social action. Let us see the difficulties both types of action may encounter.

According to one tradition of thought, the criteria according to which crime is distinguished from other forms of conduct reflect the interests of the powerful social strata rather than social consensus on what distinguishes right from wrong acts. Legal categories, from this perspective, are politically charged, and the elites are only concerned with norms that protect and expand their privileges ([Chambliss and Mankoff 1976](#)). By contrast, the liberal idea of the law reflects a form of atomistic individualism whereby persons stand before the law as abstract holders of rights, as legal persons, irrespective of status and social background. Critical legal thinkers, however, would also argue that the disadvantaged may at times benefit from the law as a set of guarantees to be used for the improvement of their condition ([Fine 2013](#)). As genuine repositories of democratic values, the laws are completely disregarded by power when it engages in the sole task of appropriating wealth, pursuing the “ugly dream” and the “empty desire” to have money beget money ([Arendt 1973](#), pp. 143–44). Positive law, in this context, may create obstacles to the endless expansion of power and support the enjoyment of the fundamental rights characterizing the human condition that no tyrant can take away. Arendt refers to the relevance of speech and of human relationships expressed through political activity, which are denied by certain power arrangements. This denial, in her view, destroys the polity and expels humans from humanity itself (*ibid*, p. 297).

Fighting the illegality of the powerful by resorting to their own laws may sound paradoxical unless one considers that the powerful routinely violate their own principles and the values they officially profess. Positive law, therefore, may be used to restore collective wellbeing and forge rules for non-exploitative interactions. Positive law is said to erect boundaries and establish channels of communication within communities which are continually endangered by the new people being born into them. “With each new birth, a new beginning is born into the world, a new world has potentially come into being” (*ibid*, p. 465). The stability of the laws is necessary vis-à-vis the constant motion of all human affairs, a motion which can never end as long as humans are born and die. The

laws protect us from new and unpredictable conducts and events; they constitute for our political existence what memory is for our identity:

they guarantee the pre-existence of a common world, the reality of some continuity which transcends the individual life span of each generation, absorbs all new origins and is nourished by them. (ibid, p. 466)

Crimes committed by authorities demolish the boundaries and channels of communication constituted by laws, they abolish the fences of laws between humans, taking away their freedom and destroying their political possibilities. From Arendt's perspective, the crimes of the powerful could be regarded as the result of a deficit of control or vigilance over positive law. The limited guarantees powerless groups are granted are not sufficiently safeguarded and defended by their bearers. Overlooking such guarantees is a mistake, Arendt warns, and fighting the crimes of the powerful does not mean changing the laws so that they favor the powerless but defending those limiting and restraining the powerful. The fight, in a nutshell, is for the conservation of humanity, as the powerful tend to create a system in which humans are superfluous (Adler 2005).

Positive and rational law, according to this analysis, constitutes a crucial patrimony to be protected. The law, it has been argued, connects our mental universe with our physical existence, thus fulfilling the anthropological function of instituting us as rational beings. It is by transforming each of us into a *homo juridicus* that "the biological and symbolic dimensions that make up our being have been linked together" (Supiot 2007, p. ix). On the other hand, we know that it is often through the law that juridical persons are annihilated. This is why establishing certainty in law may help to identify and thwart abuses and crimes of power. The crimes of the powerful, by contrast, thrive when certainty of meaning is discarded as unrealistic, when law is deemed a mere technique of domination and when, as a consequence, every "value choice" is associated to individual morality and excluded from the legal sphere. In these cases, "law's essential quality is neglected, namely that it can temper the most varied forms of political power or technological prowess with a measure of reason" (ibid, p. xxv).

## 6. Acting in Concert

It could be objected that reliance on law risks reinforcing a false notion of equality and that no meaningful social change can be achieved through tribunals. Nonetheless, the appeal to use legislation as a tool to temper power and its crimes, read from another angle, hides or implicitly encourages political action, agency, and participation. In this sense, it is a call to mobilization or, at least, to critical thinking. This call may transmit a modicum of confidence (a Gramscian optimism of the will?) in contexts characterized by "flight from the world", populated by "absent persons" who turn away from collective concerns (Sloterdijk 2016). Perhaps this is what Arendt had in mind when, while worrying for societies that appear to engage in a sort of psychological strike against reality, proposed a radically alternative view of power. The notion of law as potential tool for social change, therefore, must be linked with what she describes as the capacity to act in concert.

This formulation entails that power and coercion are not just different, they are opposites, the former being 'power to' while the latter 'power over' (Lukes 1986, p. 71). 'Power to' is primarily derived from the fostering of autonomy in collaborative endeavor through virtuous politics (Arendt 1970). It is a manifestation of genuine, undistorted communication among citizens, which allows for a kind of co-dependent autonomy (Klusmeyer 2015). Of course, we are back to Aristotle's notion of humans as political animals who realize their essence as members of the polis by facilitating autonomy through collaboration with others. But we are also very close to contemporary elaborations and collective practices.

The necessity of niche experiments that tackle inequality has been advocated within the mounting debate around transition thinking and post-capitalism (Bailey et al. 2009; De Angelis 2007; Linebaugh 2008; Hardt and Negri 2009). The two concepts are associ-

ated with the ability to think of how social change can occur, and how “niches”, where innovation takes place, may turn into “regimes”, where rules and relationships shape daily practices and announce what is possible (Chatterton 2016). Post-capitalist transition experiments are said to be the result of widespread indignation for the conduct of the elite and contain an emphasis on the “commons”, which in their simple historical form referred to the resources governed by those who depended on them. The commons today also refer to socially produced goods such as knowledge and information. “The shared attribute is that these entities are collectively owned and managed [ . . . ] The commons, then, is made real through the practice of commoning” (ibid, p. 5). This daily building of post-capitalist transitions, carried out through experimentation, transformation, and direct democracy, is perhaps a process that makes the notion of law as a tool of social change plausible.

Acting in concert implies the waging of a “war of manoeuvre” rather than a “war of position”, a military metaphor used by Gramsci (1971) to contrast ultimate violent confrontation with the creation of a new hegemonic block. Law and action in concert may stem the process turning all social groups, as Sloterdijk (2016, p. 27) warns, into “sects as substitute forms of extended families [ . . . ] functioning like church congregations”. The creation of a new hegemonic block is an alternative to a situation so described:

Our society is trying, at least at points where liberal thinking occurs, to move from totalitarian inclusiveness to a pluralism of exclusive groups. That is, society is dissolving into a patchwork of exclusive minorities that are not easy to enter. (ibid, p. 28)

## 7. Conclusions

The crimes of the powerful are the result of the different features displayed in the exercise of power itself: coercion, legitimacy, violence, secrecy, consensus, and hegemony. In this contribution, these components have been examined as blends, variable mixtures that, irrespective of the different contexts, aim at increasing social polarization. Even naked power exercised through military force, it has been argued, attempts to mobilize consensus and legitimacy leading to its expansion. Secrecy does play a role in this process, but so does ostentation, as the crimes of the powerful consist of signals, marks of omnipotence that lend themselves to imitation and, at times, admiration. Hegemony, therefore, can be achieved through crime. Domination, in its turn, is expressed through the pursuit of crude interest and the simultaneous shaping of moral authority. It is for this reason that, when confronted with the law, powerful offenders react with indignation, feeling that they cannot submit to the ordinary normativity imposed on others. In response, a notion of power as the capacity to act in concert has been advanced, one that turns the indignation of the powerless into social action.

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